



State of New Hampshire  
DEPARTMENT OF ENVIRONMENTAL SERVICES

6 Hazen Drive, P.O. Box 95, Concord, NH 03302-0095

(603) 271-3503 FAX (603) 271-2867



Christopher Brissette  
PO Box 221  
Antrim, NH 03440

Re: Goodell Road in Antrim, NH

NOTICE OF PROPOSED  
ADMINISTRATIVE FINE  
AND HEARING  
No. AF 03-012

July 29, 2003

### I. INTRODUCTION

1. This Notice of Proposed Administrative Fine and Hearing is issued by the Department of Environmental Services, Air Resources Division ("the Division") to Mr. Christopher Brissette, pursuant to RSA 125-C:15. The Division is proposing that fines totaling \$2,400 be imposed against Mr. Brissette for the violations alleged below. **This notice contains important procedural information. Please read the entire notice carefully.**

### II. PARTIES

1. The Department of Environmental Services, Air Resources Division, is an administrative agency of the State of New Hampshire, having its principal office at 6 Hazen Drive, P.O. Box 95, Concord, NH 03302.
2. Christopher Brissette is an individual having a mailing address of P.O. Box 221, Antrim, NH 03440.

### III. SUMMARY OF FACTS AND LAW SUPPORTING CLAIM(S)

1. RSA 125-C authorizes the Department of Environmental Services ("DES") to regulate sources of air pollution. RSA 125-C:4 authorizes the Commissioner of DES to adopt rules relative to the prevention, control, abatement, and limitation of air pollution in New Hampshire. Pursuant to this authority, the Commissioner has adopted N.H. Admin. Rules Env-A 100 *et seq.*
2. Pursuant to RSA 125-C:15, I-b(b) the Commissioner is authorized to impose administrative fines of up to \$2,000 per offense for violations of RSA 125-C and rules promulgated pursuant thereto.
3. RSA 125-C:6, VII authorizes Division personnel to enter "at all reasonable times in or upon any private or public property, except private residences, for the purpose of inspecting or investigating any condition which is believed or be either an air pollution source or in violation of any rules or orders promulgated hereunder".
4. Env-A 1001.03 allows only certain open burning without authorization from DES. Specifically, Env-A 1001.03(c)(4) allows the burning of untreated wood from the construction or

demolition of a building, provided that such burning shall be done in an area, which shall be specified and approved by officials having jurisdiction over open burning.

5. Env-A 101.54 defines "brush" as tree tops, limbs, saplings and tree cuttings that are five inches in diameter or less.

6. Env-A 101.286 defines "untreated wood" as any timber, board or sawn dimensional lumber, which has not been treated, coated or preserved.

7. Env-A 1001.05 provides that no tires, tubes, or any portion thereof shall be burned in the ambient air at any place in the state for any reason.

8. Christopher Brissette is the owner of property located on Goodell Road in Antrim, NH, more particularly described in the Town of Antrim Tax Map 1C as Lot 124 (the "Property").

9. On October 26, 2001, the Division issued a Notice of Past Violation to Christopher Brissette for burning non-conforming materials including tires, rims and brush over 5" in diameter on the Property in violation of Env-A 1001.03 and Env-A 1001.05.

10. On October 23, 2002, at the request of the New Hampshire Department of Resources and Economic Development, Division personnel responded to a complaint of burning of non-conforming material at the Property. At the Property, Division personnel met with Christopher Brissette's father Neil Brissette, Bart Johnson, a Brissette employee, Marshal Gale, the Antrim Fire Warden and Chief Marshall Beauchamp of the Antrim Fire Department. Division personnel observed a smoldering burn pile, approximately 50 feet in diameter.

11. During the inspection of the burn pile at the Property, Division personnel observed and photographed a large quantity of non-conforming material in the burn pile, including logs and stumps larger than 5" in diameter, charred plywood and painted wood, charred roofing materials, aluminum siding and assorted metals. Burned steel belts from radial tires and vehicle rims with steel belts still attached were also visible in the burn pile.

#### **IV. VIOLATIONS ALLEGED**

1. Christopher Brissette violated Env-A 1001.03(c)(4) by burning non-conforming materials on the Property on October 23, 2002 ("Violation 1").

2. Christopher Brissette violated Env-A 1001.05(a) by burning tires on the Property on October 23, 2002 ("Violation 2").

#### **V. PROPOSED ADMINISTRATIVE FINES**

1. Pursuant to RSA 125-C, the Division has determined Violation 1 to be a major deviation from the requirements with moderate potential for harm. RSA 125-C:15, I-b specifies a fine range of \$1,251 to \$1,750. The Division is seeking a fine of \$1,500 for this violation.

2. Pursuant to RSA 125-C, the Division has determined Violation 2 to be a major deviation from the requirements with minor potential for harm. RSA 125-C:15, I-b specifies a fine range of \$851 to \$1,500. The Division is seeking a fine of \$900 for this violation.

**The total fine being sought is \$2,400.**

#### **VI. REQUIRED RESPONSE, OPPORTUNITY FOR HEARING**

**Pursuant to Env-C 601.06, Mr. Brissette is required to respond to this notice.** Please respond **no later than August 29, 2003**, using the enclosed blue form as follows:

1. If Mr. Brissette plans to attend the hearing, please have an authorized representative sign the appearance (upper portion) and return it to the DES Legal Unit at the address noted on the form.
2. If Mr. Brissette chooses to waive the hearing and pay the proposed fine, please have an authorized representative sign the waiver (lower portion) and return it **with payment of the fine** to the DES Legal Unit.
3. If Mr. Brissette wishes to discuss the possibility of settling the case, please have an authorized representative sign the appearance and return it to the DES Legal Unit **and** call the DES Legal Unit to indicate Mr. Brissette's interest in settling.

Mr. Brissette is not required to be represented by an attorney. If Mr. Brissette chooses to be represented by an attorney, the attorney must file an appearance and, if a hearing is held, submit proposed findings of fact to the person conducting the hearing.

**If Mr. Brissette wishes to have a hearing but is unable to send an authorized representative to the hearing as scheduled**, Mr. Brissette must notify the DES Legal Unit at least one week in advance of the hearing and request that the hearing be rescheduled. If Mr. Brissette does not notify the DES Legal Unit in advance and does not have an authorized representative attend the hearing, the hearing will be conducted anyway in accordance with Env-C 202.08.

#### **VII. DETERMINATION OF LIABILITY FOR ADMINISTRATIVE FINES**

Pursuant to Env-C 601.09, in order for any fine to be imposed after a hearing, the Division must prove, by a preponderance of the evidence, that Mr. Brissette committed the violation(s) alleged and that the total amount of fine(s) sought is the appropriate amount under the applicable statute and rules. Proving something by "a preponderance of the evidence" means that it is **more likely than not** that the thing sought to be proved is true.

If the Division proves that Mr. Brissette committed the violation(s) and that the amount of fine(s) sought is the appropriate amount under the applicable statute and rules, then the fine(s) sought will be imposed, subject to the following:

☆ Pursuant to Env-C 601.09(c), the fine will be **reduced by 10%** for each of the circumstances listed below **that Mr. Brissette proves, by a preponderance of the evidence**, applies in this case:

1. The violation was a one-time or non-continuing violation, **and** Mr. Brissette did not know about the requirement when the violation occurred, **and** the violation has not continued or reoccurred as of the time of the hearing, **and** any environmental harm or threat of harm has been corrected, **and** Mr. Brissette did not benefit financially, whether directly or indirectly, from the violation.
2. At the time the violation was committed, Mr. Brissette was making a good faith effort to comply with the requirement that was violated.
3. Mr. Brissette has no history of non-compliance with the statutes or rules implemented by DES or with any permit issued by DES or contract entered into with DES.
4. Other information exists which is favorable to Mr. Brissette's case that was not known to the Division at the time the fine was proposed.

★★★★★ **IMPORTANT NOTICE** ★★★★★

**The hearing that has been scheduled is a formal hearing.** The hearing will be tape recorded, and all witnesses will testify under oath or affirmation. At the hearing, the Division will present testimony and evidence to try to prove that you committed the violation(s) alleged above and that the fine(s) should be imposed. **The hearing is Mr. Brissette's opportunity to present testimony and evidence that Mr. Brissette did not commit the violation(s) and/or that the fine(s) should not be imposed, or that the fine(s) sought should be reduced.** If Mr. Brissette has any evidence, such as photographs, business records or other documents, that Mr. Brissette believes show that Mr. Brissette did not commit the violation(s) or that otherwise support Mr. Brissette's position, Mr. Brissette should bring the evidence to the hearing. Mr. Brissette may also bring witnesses (other people) to the hearing to testify on behalf of Mr. Brissette.

**If Mr. Brissette wishes to have an informal meeting to discuss the issues, Mr. Brissette must contact the DES Legal Unit at (603) 271-6330 to request a prehearing conference.**

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Information regarding this proposed fine may be made available to the public via DES's Web page ([www.state.nh.us/des](http://www.state.nh.us/des)). If Mr. Brissette has any questions about this matter, please contact the DES Legal Unit at (603) 271-6330.

**COPY**  
Pamela G. Monroe  
Compliance Bureau Administrator  
Air Resources Division

Enclosure: Env-A 1000

cc: Mark Harbaugh, DES Legal Unit  
Susan Alexant, DES Hearings and Rules Attorney

**\*\*\* RETURN THIS PAGE ONLY \*\*\***

**CHRISTOPHER BRISSETTE**  
**IS REQUIRED BY LAW TO RESPOND TO THIS NOTICE.**

**PLEASE RESPOND NO LATER THAN August 29, 2003**

Please check the appropriate line and fill in the requested information below.

**APPEARANCE** On behalf of Christopher Brissette.

\_\_\_\_ I request to have a **formal hearing** scheduled in this matter.

\_\_\_\_ I request to have a **prehearing conference** scheduled in this matter.

\_\_\_\_ I would like to **meet informally** to discuss the issues in this matter.

**WAIVER OF HEARING** On behalf of Christopher Brissette.

\_\_\_\_ I certify that I understand the right to a hearing regarding the imposition of the proposed administrative fine and that I hereby waive those rights. The fine payment in the amount of \$2,400 paid to "Treasurer, State of New Hampshire" is enclosed.\*

**Pursuant to Env-C 203.05 please provide the following information:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Name (please print or type): \_\_\_\_\_

Title: \_\_\_\_\_

Phone: \_\_\_\_\_

**RETURN THIS PAGE ONLY TO:**

**Michael Scalfani, Legal Assistant**

**Department of Environmental Services ~ Legal Unit**

**6 Hazen Drive, P.O. Box 95**

**Concord, NH 03302-0095**

*\* If payment is made by a check, draft, or money order that is returned due to insufficient funds, pursuant to NH RSA 6:11-a, DES may charge a fee in the amount of 5% of the face amount of the original check draft, or money order or \$25.00, whichever is greater, plus all protest and bank fees, in addition to collecting the amount of the original check draft, or money order.*